

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.30638 of 2004

and

W.M.P.Nos.37120 of 2007 & 387 of 2007

M. Ayyamuthu

...Petitioner

.Vs.

1. The Engineer-in-Chief WRO, & Chief Engineer (General) Public Works Department, Cheppakkam, Chennai - 600005.
2. Principal Accountant General (Accounts & Entitlements) of Tamilnadu (Pension-15), Teynampet, Chennai - 600 018.
3. The Secretary to Government, Public Works Department, Secretariat, Chennai- 600 009.
4. The Executive Engineer, Public Works Department, Buildings (C&M) Division, Erode-638 011.
5. Tamilnadu P.W.D. Senior Engineers Association, rep. by its Secretary Er. A. Veerappan, Plot No.1C/36, Valluvar Road, TSD Nagar, Arumbakkam, Chennai-106

...Respondents

Prayer: Writ Petition filed praying to issue a Writ of Certiorarified Mandamus or any other appropriate Writ, Order or Direction in the nature of a Writ calling for the records of the 1st respondent pertaining to the impugned circular issued in circular No.CI(2)/935/2001 dated 08.04.2002 and the records of the 4th respondent herein pertaining to the impugned order passed in proceedings Lr.No.2361/NeeAa1/dated 11.08.2004 and quash the same and direct the 2nd respondent herein to approve the pension proposals of the petitioner without any recovery.

For Petitioner : Mr.K. Ana
(For M/s. Naveen Kumar Murthy)

For Respondents

1,3 & 4 : Mr.K. Magesh
Spl. Government Pleader)

For Respondent-2: Mr. Vijay Shankar-No Appearance

O R D E R

This writ petition is filed seeking for issuance of Writ of Certiorarified Mandamus calling for the records of the 1st respondent and 4th respondent pertaining to the impugned circular in No.CI(2)/935/2001 dated 08.04.2002 and the impugned order in Lr.No.2361/NeeAal/dated 11.08.2004 respectively and quash the same and direct the 2nd respondent herein to approve the pension proposals of the petitioner without any recovery.

2. When the matter is taken up for hearing, the learned counsel for the petitioner would submit that the issue herein is covered by the decision of Supreme Court in the case of "State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 Supreme Court Cases 334. In the said decision, it is held as under:

"17. Last of all, reference may be made to the decision in Sahib Ram Vs. Union of India wherein it was concluded as under:

"4. Mr.Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs.220-550 to which the appellant was entitled became Rs.700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs.700-1600 but they insisted upon the minimum educational qualification of first or second class MA, M.Sc, M.com plus a first or second class BLib Science or a Diploma in Library Science. The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly, the appellant does not possess the required educational qualifications. Under the circumstance the appellant would not be entitled to the relaxation. The Principal erred in granting him

the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

It would be pertinent to mention, that Librarian were equated with Lecturers, for the grant of the pay scale of Rs.700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class MA, MSc, MCom plus a first or second class BLib Science or a diploma in Library Science, the degree of MLib Science being a preferential qualification). For those Librarians appointed prior to 3.12.1972, the educational qualifications were relaxed. In Sahib Ram case, a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualification, even though the appellants concerned were ineligible for the higher scale, by applying the principles of "equal pay for equal work". This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law.:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of 5 years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongly been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

3. In the light of the above observations made by the Supreme Court, this writ petition is allowed. The impugned order dated 11.08.2004 is quashed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(L.A)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Copy to:

1. The Engineer-in-Chief WRO, &
Chief Engineer (General)
Public Works Department, Cheppakkam,
Chennai - 600005.

2. Principal Accountant General
(Accounts & Entitlements)
of Tamilnadu (Pension-15),
Teynampet, Chennai - 600 018.

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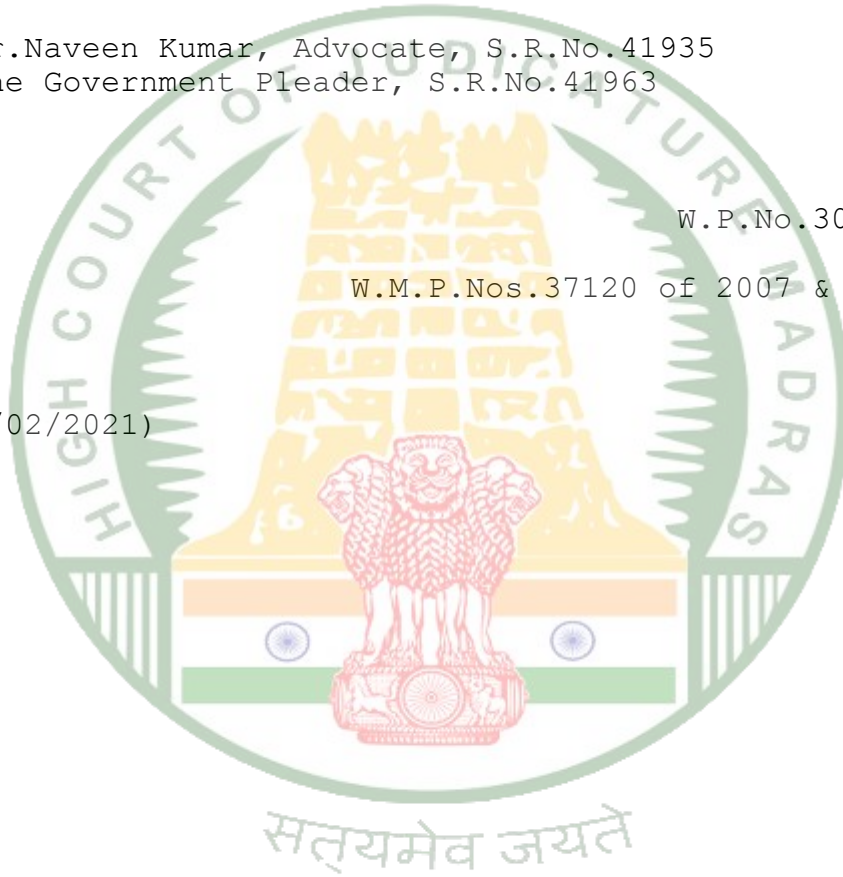
+2cc to Mr.Naveen Kumar, Advocate, S.R.No.41935

+1cc to the Government Pleader, S.R.No.41963

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